

DONNIE R. CLOUSE

IBLA 80-934

Decided December 10, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 39019.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making his offer does not vitiate this conclusion.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

APPEARANCES: Donnie R. Clouse, pro se.

# OPINION BY ADMINISTRATIVE JUDGE BURSKI

This appeal is taken from a decision dated August 8, 1980, by the New Mexico State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer NM 39019.

The offer was drawn with first priority for parcel No. NM 19 at a public drawing held on November 14, 1979. On June 17, 1980, Geological Survey (Survey) reported to BLM that the parcel is within an undefined addition to the Horseshoe Canyon-Verde known geologic structure, effective June 17, 1980. Accordingly, BLM rejected appellant's offer on the ground that land within a known geologic structure may be leased only by competitive bidding.

Appellant states on appeal that the lease was not promptly issued to him due to procrastination on the part of BLM. He demands proof that some geological development occurred between October 15, 1979 (the date of the offer), and August 8, 1980, the date of its rejection. Appellant, who followed all applicable rules and regulations in making the offer, demands that the lease be issued to him or, in the alternative, that all the filing fees received for the tract be issued to him as consolation.

[1] Land within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of Part 3120 of 43 CFR, and appellant's noncompetitive lease offer is properly rejected where, before the lease is actually issued, BLM determines that the land is within the known geologic structure of a producing oil or gas field. 30 U.S.C. § 226(b) (1976); 43 CFR 3101.7-2. Pauline C. Lebsack, 50 IBLA 361 (1980); Curtis Wheeler, 31 IBLA 221 (1977); Geral Beveridge, 14 IBLA 351, 81 I.D. 80 (1974). That appellant followed all the applicable rules and regulations in making his offer does not vitiate this conclusion. Moreover, the regulations make no provisions for consolation in the event an oil and gas lease offer must be rejected, and 43 CFR 3103.2-1 states that filing fees will be retained as service charges and cannot be returned to offerors. That BLM delayed in getting a structure report from the Geological Survey does not aid appellant in his quest for a noncompetitive lease. See Minetta A. Miller, 17 IBLA 245 (1974); Silver Monument Minerals, Inc., 14 IBLA 137 (1974); F. William Johnson, Jr., 3 IBLA 232 (1971); cf. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (1974).

[2] Inasmuch as appellant has challenged the determination by Survey that the lands are situated within the known geologic structure of a producing oil or gas field, he has the burden of showing that the

determination is in error. Appellant has made no effort to submit evidence in this respect, and the determination will not be disturbed in the absence of a clear and definite showing of error. United States v. Alexander, 41 IBLA 1 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

